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09/848,883	05/04/2001	Stacy Susan Hawkins	J6610(C)	8355

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EXAMINER

ROSARIO-VASQUEZ, DENNIS

ART UNIT PAPER NUMBER

2621

DATE MAILED: 07/01/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/848,883

Applicant(s)

HAWKINS ET AL.

Examiner

Dennis Rosario-Vasquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amed A, 04/12/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment was received on April 12, 2004 and has been entered and made of record. Claims 1-12 are pending.

### ***Priority***

2. Due to the amendment, priority is in compliance with 35 U.S.C. 119 (e).

### ***Claim Objections***

3. Due to the amendment, the objection to claim 5 has been withdrawn.

### ***Response to Arguments***

4. Applicant's arguments, see amendment A, page 10 filed April 12, 2004, with respect to the rejection(s) of claim(s) 1,5,6 and 7 under Hillebrand et al. (US Patent 6,571,003 B1) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hawkins et al. (submitted with the IDS.).

5. Applicant's arguments, see amendment A, page 10 and 11 filed April 12, 2004, with respect to the rejection(s) of claim(s) 1,5,11 and 12 under Hillebrand et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of BEHARA et al. (International Publication Number: WO 97/29441 submitted in the IDS.).

6. Applicant's arguments filed in amendment A, pages 10 and 11 have been fully considered but they are not persuasive. The amendment states on page 11,

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line 3 that "The Internet feature is not found in the reference." However, the reference, Hillebrande et al., does teach the Internet feature in col. 4, lines 26,27.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand et al. (US Patent 6,571,003 B1) in view of Hawkins et al. (disclosed in the IDS) further in view of BECHARA et al. (International Publication Number: WO 97/29441 submitted in the IDS.).

Regarding claim 1, Hillebrand et al. discloses a method for demonstrating effectiveness of a cosmetic product on a consumer's body parts (Hillebrand et al. states, "The method and apparatus provide quick identification of the skin defects in a user friendly manner thereby allowing an operator to recommend cosmetic products or medical treatments and simulate an improvement and/or worsening to the areas (col. 1, lines 45-50).") when applied over a period of time, the method comprising:

(i) selecting a cosmetic product for trial on the consumer's body (A cosmetic product is selected by an operator for recommending a treatment as mentioned in col. 11, lines 50-53.) and identifying a body feature (A person face is identified as shown in figure 5, num. 518.) being observed over the time ("The

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person's age may be entered..." at col. 5, lines 50-54, or a person may return for a subsequent visit at col. 5, lines 47,48);

(ii) capturing an initial image of the body part (A picture is taken of a persons face with a camera as mentioned in col. 5, lines 4-6 and shown in figure 5, num. 518.);

(iii) displaying the initial image on a monitor (The initial image of figure 5, num. 518 is displayed on a monitor 502 as mentioned in col. 5, lines 17-21.);

(iv) providing an assessment of the initial image based upon results (An assessment or analysis of the initial image of figure 5, num. 518 is performed using the results from a population of people as mentioned in col. 4, lines 46-49.);

(v) digitally transforming the selected body feature of the consumer on the displayed image based upon results with a predicted effect of the cosmetic product (A facial simulation and morphing algorithm are used to transform the selected body feature of a face (fig. 5, num. 518) of the consumer to show a predicted or simulated effect of using the cosmetic product mentioned in col. 11 , lines 50-57 and col. 12, lines 10-25.) of the consumer and displaying the digitally transformed image;

(vi) requiring the consumer to compare results of the transformed versus the initial or a further transformed image (The consumer is required to use the toggle switch to alternate the display of the transformed or improved image created using the facial simulation and morphing algorithm and original image of figure 5, num. 518 as mentioned in col. 12, lines 34-41.); and

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(vii) optionally repeating steps (v) and (vi) till the consumer has chosen an optimal transformation. See figure 15. Note that the starting point, "simulate and display improvement" has a depth of improvement as does ending point 1506. Step 1506 indicates a repetition of steps. Also a slider bar (fig. 16, num. 1602) is provided that displays an improved image or a worse image depending on the direction of the sliding bar; therefore the image is transformed which each slide of the bar at col. 12, lines 29-34.

Regarding claim 5, Hillebrand et al. discloses a method for identifying cosmetic needs of a consumer that are personal to the consumer, the method comprising:

(i) gathering information from the consumer concerning the consumer's cosmetic needs in treating a body feature (Hillebrand et al. shows on figure 5, numerals 521 and 522 information of a consumer name and age, respectively, gathered concerning the consumer's cosmetic skin needs (Fig. 5, numerals 506,508,510,512, 514 and 530 are skin characteristics that are selected based on the consumer's needs.) in treating the consumer's face as shown in figure 5, num. 518 using an analyze button fig. 5, num. 532 that initializes a simulated treatment as mentioned from col. 5, line 17 to col. 6, line 8 and col. 11, lines 47-49.

(ii) capturing an initial image of the body part (A picture is taken of a persons face with a camera as mentioned in col. 5, lines 4-6 and shown in figure 5, num. 518.);

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- (iii) displaying the initial image on a monitor (The initial image of figure 5, num. 518 is displayed on a monitor 502 as mentioned in col. 5, lines 17-21.);
- (iv) providing an assessment of the initial image based upon results (An assessment of the initial image of figure 5, num. 518 is performed using the results from a population of people as mentioned in col. 4, lines 47-49.);
- (v) digitally transforming in a manner reflecting the effect of a recommended cosmetic over a period of time, based upon the assessment, of a property of the body feature of the consumer selected from color, sags, wrinkles, texture, radiance and combinations thereof (The gathered data of the consumer is analyzed with a predetermined age group that was measured for skin characteristics (col. 5, lines 43-59.) that will be implemented for the facial simulation and morphing algorithm that is used to transform the selected body feature of a face (fig. 5, num. 518) of the consumer to show a predicted or simulated effect of using the cosmetic product (col. 11 , lines 50-57 and col. 12, lines 10-25 ) based on a selection of wrinkles and texture (As shown by the checked boxes of figure 5, numeral 530.) and combinations thereof (Wrinkles and texture are both selected.)), and displaying the transformed image.;

The remaining limitations have been addressed in claim 1.

Regarding claim 6, Hillebrand et al. discloses a kit for displaying a consumer's skin image and transforming the image into consumer-defined composite attributes, the kit comprising:

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(a) a camera (fig. 1, num. 120 is a camera as mention in col. 3, lines 46-49 ) for obtaining an initial image (fig. 5 ,num. 518) of the consumer's skin (A consumer's face at Hillebrand et al. at col. 4, lines 60-62);

(b) a screen (fig. 5 ,num. 502) for receiving and displaying the initial image 518 of figure 5.;

(c) a memory program (fig. 2, num. 204: "program memory 204 that implements all...of the method described below...(col. 4, lines 13-15).") for transforming (fig. 5, num. 516:"Simulation") the initial image in a manner reflecting an effect achievable by application over a period of time (A consumer would have subsequent sessions using data from a previous session at col. 5, lines 47-50 and col. 11 ,lines 40-43 or a consumer's age is used as a limit with a population's age average at col. 5, lines 51-54) of a cosmetic product (A product is used to show a consumer the results of using and not using a product at Hillebrand et al., col. 11 ,lines 47-57) and for displaying the transformed image in a relationship to the initial image (A toggle button is used to switch from the initial image of figure 5, num. 518 to a transformed image as mentioned in col. 12, lines 34-38.) , the memory program being based upon an assessment or analysis as mentioned in col. 4, lines 41-49.

Claim 7 has been addressed in claims 1 and 5.

Hillebrand et al. does not teach the step of providing an assessment of the initial image based upon results of an expert grader study which has calculated consumer perceivable skin attributes conducted on panelists with no treatment/product use, and does teach the step of providing an assessment or



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comparison of the initial image based upon results based upon skin measurements of a population of people or panelists as mentioned in col. 7, lines 58-65.

However, Hawkins et al. does teach the limitation of claim 1 of providing an assessment of the initial image based upon results of an expert grader study which has calculated consumer perceivable skin attributes conducted on panelists with no treatment/product use as mentioned in Hawkins et al. page 161, "STUDY #2, second paragraph starting with "In both studies".

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify Hillebrand et al.'s skin measurements of a population for analysis with an initial image with Hawkins et al.'s expert grader study because Hawkins et al.'s expert grader study offers the "ability to quantify the components of a complex consumer concept, such as 'healthy skin' on the face provides several advantages. It permits clearer communication with the consumer, and provides the ability to truly target emerging technologies against the appropriate attributes (Hawkins et al., page 165,"Conclusions".)

In addition, Hillebrand et al. does not teach the limitation of displaying the transformed image tiled beside the initial image; however, Hillebrand et al. does suggest using two displays for comparison as shown in fig. 1. num. 108 and 114 and mentioned in col. 3, lines 63-65.

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However, BECHARA et al., discloses the limitation of displaying the transformed image tiled beside the initial image as shown in figure 5 of an initial image in the top left corner and a transformed image on the top right corner tiled beside the initial image.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the two display teaching of Hillebrand et al. with BECHARA et al.'s teaching, because BECHARA et al.'s teaching allows a consumer to choose and compare a preferable image from other images as mentioned in col. 14, lines 11-24. In addition, Hillebrand et al.'s two display system can be replaced with one display, thus saving equipment costs.

Regarding claim 2, Hillebrand et al. discloses a method according to claim 1 wherein the body feature being transformed is that of lines and wrinkles (figure 5, num 510). Hillebrand et al. uses wrinkles and/or fine lines as a defect type to be located at col. 8, lines 4-6.

Regarding claim 3, Hillebrand et al. discloses a method according to claim 1 wherein the body feature transformed is that of color. Hillebrand et al. states, "Each of the improved (or worsened) areas is created by electronically altering the color of a plurality of pixels in one of the plurality of defect areas located in the first digital image of the face of the person (col. 2, lines 27-30)."

Regarding claim 4, Hillebrand et al. discloses the method according to claim 1 wherein the body feature is that of skin pores (fig. 5, num. 512: "Pores").

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Regarding claims 8,9 and 10, Hillebrand et al. discloses the method according to claims 1,5 and 7 wherein capturing step (ii) is performed by use of a digital camera 120 of figure 1 as mentioned in col. 3, lines 46-49 and wherein the captured image is transmitted via Internet using an input and output port 210 of figure 2 that is connected for transmission to the Internet as mentioned in col. 4, lines 23-29.

Regarding claims 11 and 12 the combination of Hillbrand et al. and BECHARA et al. teaches the method according to claim 1 wherein more than one transformed image is placed on a screen with the displayed initial image. BECHARA et al. shows more than one transformed image shown in figure 5 with the initial image in the top left corner and three transformed images adjacent to the initial image.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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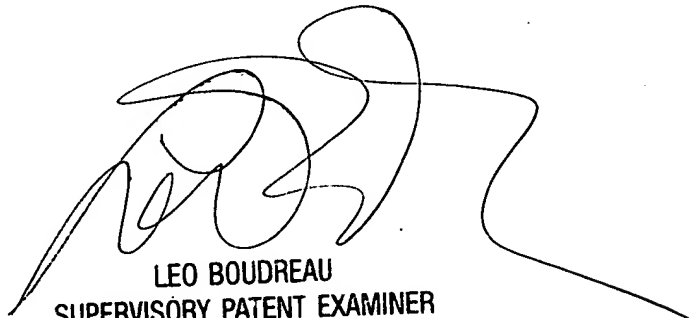
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario-Vasquez whose telephone number is 703-305-5431. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Boudreau can be reached on 703-305-4706. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRV

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